



Town of Southern Shores

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Ordinance 2018-03-01

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE TOWN OF SOUTHERN SHORES, NORTH CAROLINA

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. § 160A-381, the Town of Southern Shores (the "Town") may enact and amend ordinances regulating the zoning and development of land within its jurisdiction and specifically the location and use of buildings, structures and land. Pursuant to this authority and the additional authority granted by N.C.G.S. Chap. 160A, Art. 19 et. seq, the Town has adopted a comprehensive zoning ordinance (the "Town's Zoning Ordinance") and has codified the same as Chapter 36 of the Town's Code of Ordinances (the "Town Code"); and

WHEREAS, N.C.G.S. § 160A-400.50 et seq. governs the Town's authority to regulate wireless telecommunications facilities. 2017 N.C. Sess. Law 159 made substantial changes to the text of N.C.G.S. § 160A-400.50 et seq. and become the law of North Carolina as of July 21, 2017. The changes to N.C.G.S. § 160A-400.50 et seq. affect the Town's regulations of wireless telecommunications facilities and require that the Town's Zoning Ordinance be updated accordingly; and

WHEREAS, N.C.G.S. § 160A-400.50 as amended provides that the Town is not authorized to require the construction or installation of wireless facilities or to regulate wireless services other than as set forth in N.C.G.S. § 160A-400.50 et seq.; and

WHEREAS, N.C.G.S. § 160A-400.54 provides that the Town shall not prohibit, regulate, or charge for the collocation of small wireless facilities other than as set forth in N.C.G.S. § 160A-400.50 et seq.; and

WHEREAS, the Town further finds that in accordance with the findings above it is in the interest of and not contrary to the public's health, safety, morals and general welfare for the Town to amend the Town's Zoning Ordinance and Town Code of Ordinances as stated below.

ARTICLE II. Construction.

For purposes of this ordinance amendment, underlined words (underline) shall be considered as additions to existing Town Code language and strikethrough words (~~strikethrough~~) shall be considered deletions to existing language. Any portions of the

1 adopted Town Code which are not repeated herein, but are instead replaced by an ellipses
2 (“...”) shall remain as they currently exist within the Town Code.
3

4 **ARTICLE III. Amendment of Zoning Ordinance.**

5
6 NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Southern
7 Shores, North Carolina, that the Town Code shall be amended as follows:
8

9 **PART I.** That **Sec. 36-175 Wireless telecommunications sites and towers.** be
10 amended as follows:
11

12 **Sec. 36-175. Wireless telecommunications sites, facilities and towers.**

13
14 (a) *Definitions.* The following definitions shall apply to all portions of the
15 Town Code relating to the use or construction of any portion of a wireless
16 telecommunications site within the town.
17

18 (1) *Antenna:* Communications equipment that transmits, receives, or transmits
19 and receives electromagnetic radio signals used in the provision of all types
20 of wireless communications services.
21

22 (2) *Applicable Codes:* The North Carolina State Building Code and any other
23 uniform building, fire, electrical, plumbing, or mechanical codes adopted
24 by a recognized national code organization together with State or local
25 amendments to those codes enacted solely to address imminent threats of
26 destruction of property or injury to persons.
27

28 (23) *Application:* ~~A formal request submitted to the town to construct or modify~~
29 ~~a wireless support structure or a wireless facility.~~ A request that is submitted
30 by an applicant to a city for a permit to collocate wireless facilities or to
31 approve the installation, modification, or replacement of a utility pole, city
32 utility pole, or wireless support structure.
33

34 (34) *Base station:* A station at a specific site authorized to communicate with
35 mobile stations, generally consisting of radio receivers, antennas, coaxial
36 cables, power supplies, and other associated electronics.
37

38 (45) *Building permit:* An official administrative authorization issued by the town
39 prior to beginning construction consistent with the provisions of G.S. 160A-
40 417.
41

42 (6) *City rights-of-way:* A rights-of-way owned, leased, or operated by a city,
43 including any public street or alley that is not a part of the State highway
44 system.
45

46 (7) *City utility pole:* A pole owned by a city in the city rights-of-way that

provides lighting, traffic control, or a similar function.

- (58) Collocation: The ~~placement or installation~~ placement, installation, maintenance, modification, operation, or replacement of wireless facilities ~~on~~ on, under, within, or on the surface of the earth adjacent to existing structures, including ~~electrical transmission towers~~, utility poles, city utility poles, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with ~~this chapter~~ applicable codes. The term "collocation" does not include the installation of new utility poles, city utility poles, or wireless support structures.
- (9) Communications facility: The set of equipment and network components, including wires and cables and associated facilities used by a communications service provider to provide communications service.
- (10) Communications service: Cable service as defined in 47 U.S.C. § 522(6), information service as defined in 47 U.S.C. § 153(24), telecommunications service as defined in 47 U.S.C. § 153(53), or wireless services.
- (11) Communications service provider: A cable operator as defined in 47 U.S.C. § 522(5); a provider of information service, as defined in 47 U.S.C. § 153(24); a telecommunications carrier, as defined in 47 U.S.C. § 153(51); or a wireless provider.
- (612) Eligible facilities request: A request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment or replacement of transmission equipment but does not include a substantial modification.
- (713) Equipment compound: An area surrounding or near the base of a wireless support structure within which a wireless facility is located.
- (814) Fall zone: The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.
- (915) Geographic antenna coverage area: The general vicinity within which an antenna serves the transmission requirements of a cellular or other broadcasting network.
- (1016) Land development regulation: Any ordinance enacted pursuant to this Part 3E of Article 19 of Chapter 160A of the North Carolina General Statutes.
- (17) Micro wireless facility: A small wireless facility that is no larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in

height and that has an exterior antenna, if any, no longer than 11 inches.

(1118) *Monopole*: A slender self-supporting telecommunications tower consisting of a single pole.

(1219) *Search ring*: The area within which a wireless support facility or wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.

(20) *Small wireless facility*: A wireless facility that meets both of the following qualifications:

a. Each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements, if enclosed, could fit within an enclosure of no more than six cubic feet.

b. All other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet. For purposes of this sub subdivision, the following types of ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground based enclosures, grounding equipment, power transfer switches, cut off switches, vertical cable runs for the connection of power and other services, or other support structures.

(1321) *Stealth structure*: A wireless support structure designed to look like or incorporated within a structure which has a primary purpose as something other than a wireless support structure or is otherwise designed in a manner in which all wireless facilities attached to the structure are concealed from view, including, but not limited to trees, flag poles, slick sticks (flag poles without flags), clock towers, bell towers or church steeples.

(1422) *Substantial modification*: The mounting of a proposed wireless facility on a wireless support structure that substantially changes the physical dimensions of the support structure. A mounting is presumed to be a substantial modification if it meets any one or more of the criteria listed below. The burden is on the local government to demonstrate that a mounting that does not meet the listed criteria constitutes a substantial change to the physical dimensions of the wireless support structure.

a. Increasing the existing vertical height of the structure by the greater of (i) more than ten percent (10%) or (ii) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet.

1
2 b. Except where necessary to shelter the antenna from inclement
3 weather or to connect the antenna to the tower via cable, adding an
4 appurtenance to the body of a wireless support structure that
5 protrudes horizontally from the edge of the wireless support
6 structure the greater of (i) more than 20 feet or (ii) more than the
7 width of the wireless support structure at the level of the
8 appurtenance.
9

10 c. Increasing the square footage of the existing equipment
11 compound by more than 2,500 square feet.
12

13 (1523) *Telecommunications accessory equipment structure:* A building or
14 cabinet-like structure located adjacent to, or in the immediate vicinity of a
15 wireless support structure or antenna to house equipment incidental to the
16 receiving or transmitting of wireless broadcasts, cellular telephone calls,
17 voice messaging and paging services.
18

19 (1624) *Tower, short telecommunications:* A telecommunications tower with a
20 height that is less than 70 feet.
21

22 (1725) *Tower, tall telecommunications:* A telecommunications tower with a height
23 that is 70 feet tall or greater up to a height of 195 feet tall.
24

25 (1826) *Tower, telecommunication:* A freestanding wireless support structure,
26 including stealth structures which are not incorporated within another type
27 of structure, which are intended to support one or more wireless facilities.
28

29 (1927) *Utility pole:* A structure that is designed for and used to carry lines, cables,
30 ~~or wires~~ wires, lighting facilities, or small wireless facilities for telephone,
31 cable television, ~~or electricity, or to provide lighting~~ lighting, or wireless
32 services.
33

34 (2028) *Water tower:* A water storage tank, a standpipe, or an elevated tank situated
35 on a support structure originally constructed for use as a reservoir or facility
36 to store or deliver water.
37

38 (2129) *Wireless facility:* ~~The set of equipment and network components, exclusive~~
39 ~~of the underlying wireless support structure or tower, including antennas,~~
40 ~~transmitters, receivers, base stations, power supplies, cabling, and~~
41 ~~associated equipment necessary to provide wireless data and wireless~~
42 ~~telecommunications services to a discrete geographic area. Equipment at a~~
43 fixed location that enables wireless communications between user
44 equipment and a communications network, including (i) equipment
45 associated with wireless communications and (ii) radio transceivers,
46 antennas, wires, coaxial or fiber optic cable, regular and backup power

1 supplies, and comparable equipment, regardless of technological
2 configuration. The term includes small wireless facilities. The term shall
3 not include any of the following:
4

5 a. The structure or improvements on, under, within, or adjacent
6 to which the equipment is collocated.
7

8 b. Wireline backhaul facilities.
9

10 c. Coaxial or fiber optic cable that is between wireless
11 structures or utility poles or city utility poles or that is otherwise not
12 immediately adjacent to or directly associated with a particular
13 antenna.
14

15 (30) Wireless infrastructure provider: Any person with a certificate to provide
16 telecommunications service in the State who builds or installs wireless
17 communication transmission equipment, wireless facilities, or wireless
18 support structures for small wireless facilities but that does not provide
19 wireless services.
20

21 (31) Wireless provider: A wireless infrastructure provider or a wireless services
22 provider.
23

24 (32) Wireless services: Any services, using licensed or unlicensed wireless
25 spectrum, including the use of Wi Fi, whether at a fixed location or mobile,
26 provided to the public using wireless facilities.
27

28 (33) Wireless services provider: A person who provides wireless services.
29

30 (2234) Wireless support structure: A new or existing structure, such as a
31 monopole, lattice tower, or guyed tower that is designed to support or
32 capable of supporting wireless facilities. A utility pole or a city utility pole
33 is not a wireless support structure.
34

35 (2335) Wireless telecommunications site: The combination of all of the materials
36 and equipment on a site used to provide wireless telecommunications
37 service including, but not limited to, any wireless support structures,
38 telecommunications towers, wireless facilities, antennae, ground based
39 communications equipment, telecommunications accessory equipment
40 structures and equipment compounds.
41

42 (b) Requirements for wireless telecommunications sites, new wireless support
43 structures or substantial modification of wireless support structures. All wireless
44 telecommunications sites, new wireless support structures or substantial modification of
45 wireless support structures located within the town must comply with all of the following
46 requirements:

1
2 (1) *Safety standards.* All proposed telecommunication towers, new wireless
3 support structures or substantial modification of wireless support structures
4 and wireless facilities shall comply with all applicable federal, state and
5 local laws including specifically the following:
6

7 (a) Federal Communications Commission standards, rules and
8 regulations;
9

10 (b) Federal Aviation Administration standards, rules and regulations;
11

12 (c) N.C.G.S. § 160-400.50 et seq.;
13

14 (d) The North Carolina Building Code;
15

16 (e) Accepted industry standards for wind loading, base stabilization and
17 other critical engineering characteristics as defined by American
18 National Standards Institute (ANSI), Telecommunications Industry
19 Association (TIA) and Electronic Industry Alliance (EIA) 222-G or
20 its successors.
21

22 (2) *Use guidelines and dimensional requirements.*
23

24 (a) *Permissible uses.* Wireless telecommunications sites and facilities
25 shall only be permitted as follows:
26

27 1. As an accessory use to an existing primary use that is not a
28 dwelling.
29

30 2. As a collocation of wireless facilities upon an existing
31 permitted wireless telecommunications site.
32

33 (b) *Collocation.*
34

35 1. Collocation of new antennas, wireless facilities and other
36 equipment on an existing wireless support structure or
37 structures within the applicant's search ring shall be required
38 whenever reasonably feasible. Collocation is not reasonably
39 feasible if an applicant can show it is technically or
40 commercially impractical for the applicant to collocate or if
41 the owners of all of the telecommunication towers within the
42 applicant's search ring where collocation would be
43 technically practical are unwilling to enter into a contract for
44 such use at fair market value.
45

46 2. Short telecommunications towers including the structure and

1 fenced compound shall be designed to accommodate the
2 wireless facilities of at least one provider plus space for
3 emergency communication antennas used by the town's
4 police and fire service provider.
5

- 6 3. Tall telecommunications towers including the structure and
7 fenced compound shall be designed to accommodate
8 collocation of the wireless facilities of at least three
9 providers plus space for emergency communication
10 antennas used by the town's police and fire service provider.
11

12 (c) *Location.*
13

- 14 1. Tall telecommunications towers shall not be located within
15 one-half mile of any other tall telecommunications tower or
16 within 250 feet of any other wireless support structure
17 located within the expected geographic antenna coverage
18 area of the proposed telecommunication tower.
19
20 2. Short telecommunications towers and stealth structures
21 incorporated within another structure shall not be located
22 within 250 feet of any other wireless support structure
23 located within the expected geographic antenna coverage
24 area of the proposed wireless support structure unless the
25 applicant can show that locating the structure within the
26 prescribed distance is necessary to insure adequate coverage
27 and capacity. In the case of a stealth structure incorporated
28 within another structure, the town council may reduce or
29 disregard the distance requirement stated herein.
30

31 (d) *Height.* The height of a wireless support structure includes any
32 attached or proposed to be attached wireless facilities and shall be
33 measured vertically from the pre-disturbance ground level at the
34 center of the structure. The height shall not include emergency
35 communications antennas or lightning rod(s) attached to the
36 structure.
37

- 38 1. In no case shall a wireless support structure of any kind or
39 any attached wireless facilities exceed 195 feet in height.
40
41 2. The height of tall telecommunications towers shall not
42 exceed 195 feet.
43
44 3. The height of short telecommunications towers shall not
45 exceed 70 feet.
46

4. The height of stealth structures incorporated within or upon an otherwise permitted structure shall not exceed the height allowed for the structure.
5. The height of stealth structures designed to look like another structure or naturally occurring thing, i.e. a tree, shall not unreasonably exceed the height allowed for the type of structure or the typical thing they are designed to look like. The reasonableness of excess height shall be considered on an application by application basis and shall take into account the totality of the circumstances including specifically, the height needed to provide communications services and the wireless support structure's visual consistency with the area in which it will be located.
6. In no case shall a wireless support structure of any kind or any attached wireless facilities exceed the minimum height necessary to accomplish the purpose it is proposed to serve. Notwithstanding the foregoing, when measuring the height of a wireless support structure, the purpose of the structure may include maximizing the ability for collocations upon the structure and shall include ensuring that the structure is capable of supporting at least the minimum number of collocations required by this ordinance.

(e) *Permitted structures.* Stand alone wireless support structures and pole-like stealth structures shall be monopoles. Stealth structures designed to look like other structures or naturally occurring things, i.e. a tree, or that are incorporated within or upon any existing or permitted structure are allowed if otherwise consistent with this ordinance. Wireless support structures using other designs, including, but not limited to guyed towers and lattice type towers shall not be permitted.

(f) *Setbacks.*

1. Unless otherwise provided by this ordinance, the dimensions of the entire lot shall be used to determine if a wireless telecommunications site meets the dimensional and setback requirements of this section. An existing use or structure on the same lot shall not preclude locating a wireless telecommunications site on a lot so long as compliance with subsection 36-175(2)(a) is maintained.
2. The base of a wireless support structure shall be located at least one foot from the nearest property line for every one

1 foot of proposed height. In the case of stand alone stealth
2 structures only, the town council may in its discretion
3 consider publicly maintained roadways as providing
4 additional property for calculation of set backs and/or reduce
5 the setback requirement from this 1:1 setback ratio to a
6 setback of one-third of the height of the proposed structure.
7 The 1:1 setback requirement may only be reduced to one-
8 third of the height of the proposed structure when a North
9 Carolina registered professional engineer certifies that the
10 wireless support structure's fall zone is equal to or less than
11 the setback requested and that the structure is designed to
12 collapse within the setback requested provided any or all of
13 the following are also shown by the applicant:

- 14
- 15 i. No dwelling unit is located or can be constructed
16 within the fall zone of the wireless support structure;
17 or
18
- 19 ii. Where a dwelling unit is located or can be
20 constructed within the fall zone of the wireless
21 support structure, all property owners within the fall
22 zone have agreed in writing or through sworn
23 testimony that they are willing to accept the risks of
24 the reduced setback.
25
- 26 3. When stealth structures are incorporated within or upon an
27 existing or otherwise permitted structure, the setbacks
28 associated with the structure shall apply.
29
- 30 4. Telecommunications accessory equipment structures, any
31 equipment compounds and any other structures shall be set
32 back a minimum of 50 feet from all property lines and rights-
33 of-way. Where visual impact and public safety concerns will
34 not be affected, the town council may reduce the setback to
35 no less than 15 feet.
36

37 (g) *General aesthetics.*
38

- 39 1. Telecommunication towers, wireless facilities, accessory
40 equipment structures and equipment compounds shall be
41 constructed and maintained to minimize visual
42 obtrusiveness in color and finish. Stealth structures shall be
43 consistent with the overall appearance of the town and of the
44 area of town in which they are located.
45
- 46 2. Accessory equipment structures, equipment compounds and

related structures at telecommunication tower sites shall be of such design, materials and colors to blend with surrounding structures.

3. Outdoor storage of equipment or related items shall be prohibited at all wireless telecommunication sites.
4. Electrical and telephone lines serving a wireless telecommunication site shall be installed underground from the point of existing service.
5. Sound emissions, such as alarm bells, buzzers and the like, shall not be permitted. Nothing contained herein shall prohibit the reasonable use of emergency generators at wireless telecommunications sites.

(h) *Fencing.* All telecommunication towers, their accessory equipment structures and equipment compounds shall be enclosed by chain link fencing and/or wall, not less than six feet nor more than ten feet in height. Such fences may be equipped with anti-climbing devices. The gate into the fenced area shall be located so that it is not easily visible from a street or adjacent property.

(i) *Screening/landscaping and buffers.*

1. The base of a wireless support structure, to a minimum height of ten feet above average grade at the tower base, shall not be visible from any publicly owned or maintained roadway.
2. Screening is required along all exterior sides of the fence described above excluding the gate. Screening shall be a minimum width of ten feet with two staggered rows of planting material placed ten feet on center, that are a minimum of five feet in height when planted, and that are expected to reach a height of eight feet within three years. Suitable plant types shall be those recommended by the U.S. Department of Agriculture to achieve a mature growth height of eight to ten feet in the coastal area. The town council may waive or modify this requirement where existing trees, vegetation and/or structures provide suitable screening and buffering.

(j) *Lighting.*

1. Telecommunication towers shall be lighted only if

specifically required by the Federal Aviation Administration, in which case, Federal Aviation Administration minimum lighting requirements shall be applied.

2. When lighting is required by the Federal Aviation Administration, strobe lights shall be avoided unless specified by Federal Aviation Administration. When strobe lights are required on telecommunication towers, a dual lighting system of white strobes for daytime lighting and a red flashing light atop the tower for nighttime lighting shall be used unless other lighting is specifically required by the Federal Aviation Administration, the U.S. Fish and Wildlife Service or any state or federal agency having regulatory authority over the applicant.

3. Except for lighting described in 2. above, all lighting at a wireless telecommunications site shall be shielded and shall comply with the provisions for outdoor lighting contained in section 36-166.

(k) *Signage.* Wireless telecommunication sites shall not display signage, logos symbols or any messages of a commercial or non-commercial nature except for legal notices, identifications, directional and informational signs erected or required by governmental bodies, public utilities or civic associations with the approval of town council;. A sign, not visible from a public right-of-way or adjacent residences, shall be posted on the fence gate identifying the current owner of the tower, emergency contact person or agency, and applicable contact numbers. This provision shall not preclude the applicant from posting any additional signage required by federal or state law.

(c) *Collocation and eligible facilities requests of wireless support structures.*

(1) The town may not deny and shall approve any eligible facilities request as provided in this section.

(2) No application or approval is required for routine maintenance and this section shall not be construed to limit the performance of routine maintenance on wireless support structures and facilities, including in-kind replacement of wireless facilities. Routine maintenance includes activities associated with regular and general upkeep of transmission equipment, including the replacement of existing wireless facilities with facilities of the same size.

1 (3) For all collocations and eligible facilities request, an application is
2 required.

3
4 (4) A collocation or eligible facilities request application is deemed
5 complete unless the town provides notice that the application is
6 incomplete in writing to the applicant within 45 days of submission or
7 within some other mutually agreed upon time frame. The notice shall
8 identify the deficiencies in the application which, if cured, would make
9 the application complete. The town may deem an application
10 incomplete if there is insufficient evidence provided to show that the
11 proposed collocation or eligible facilities request will comply with
12 federal, State, and local safety requirements. The town may not deem
13 an application incomplete for any issue not directly related to the actual
14 content of the application and subject matter of the collocation or
15 eligible facilities request. An application is deemed complete on
16 resubmission if the additional materials cure the deficiencies indicated.

17
18 (5) The town shall issue a written decision approving an eligible facilities
19 request application within 45 days of such application being deemed
20 complete. For a collocation application that is not an eligible facilities
21 request, the town shall issue its written decision to approve or deny the
22 application within 45 days of the application being deemed complete.

23
24 (6) The town may impose a fee not to exceed one thousand dollars (\$1,000)
25 for technical consultation and the review of a collocation or eligible
26 facilities request application. The fee must be based on the actual,
27 direct, and reasonable administrative costs incurred for the review,
28 processing, and approval of a collocation application. The town may
29 engage a third-party consultant for technical consultation and the
30 review of a collocation application. The town may incorporate such
31 fees into its generally adopted fee schedule. The fee imposed by the
32 town for the review of the application may not be used for either of the
33 following:

34
35 (a) Travel expenses incurred in a third-party's review of a collocation
36 application.

37
38 (b) Reimbursement for a consultant or other third party based on a
39 contingent fee basis or results-based arrangement.

40
41 (d) *Application requirements:* Any person that proposes to construct or substantially
42 modify a wireless telecommunications site (including construction of wireless support
43 structures or substantial modifications of wireless support structures) or who proposes to
44 collocate or make an eligible facilities request shall submit a completed application with the
45 necessary copies to the town planning department. An application shall not be deemed
46 complete until all of the following items required have been submitted:

47
48 (1). For wireless telecommunications sites only, documentation showing

1 the reasonable feasibility of collocating new antennas, wireless
2 facilities and equipment on an existing structure or structures within
3 the applicant's search ring. If an applicant contends that collocation
4 on an existing structure is not reasonably feasible he shall submit
5 documentation that (1) collocation is technically or commercially
6 impractical; or (2) the owner of the telecommunication tower is
7 unwilling to enter into a contract for such use at fair market value.
8 At a minimum, technical documentation shall include a map of the
9 search ring displaying all potential collocation sites and stating why
10 each is suitable or unsuitable. Where an applicant contends that the
11 owner or an existing wireless support structure or other feasible
12 structure will not contract for its use for fair market value, the
13 applicant must submit, in writing (1) a declaration from owners of
14 all technically feasible collocation sites stating the price at which
15 they are willing to negotiate space; (2) evidence that the applicant
16 has tried in good faith to negotiate market value terms for the
17 collocation at each site and (3) an licensed appraiser's certified
18 opinion on the market value of collocation at each technically
19 feasible collocation site.
20

- 21 (2). A scaled site plan, scaled elevation view, and supporting drawings,
22 calculations and other documentation, prepared and sealed by
23 appropriate licensed professionals, showing the location and
24 dimensions of all improvements for the wireless
25 telecommunications site including topography, wireless supports
26 structure height requirements, setbacks, access driveways or
27 easements, parking, fencing, landscaping, adjacent uses and any
28 other information necessary to assess compliance with this article
29 and compatibility with surrounding uses.
30
31 (3). For wireless telecommunications sites only, documentation that
32 Federal Aviation Administration's minimum lighting standards have
33 been met for the wireless telecommunications site.
34
35 (4). For wireless telecommunications sites only, documentation that the
36 proposed wireless telecommunications site will comply with all
37 applicable FCC rules and regulations.
38
39 (5). Documentation, prepared and sealed by a professional engineer
40 registered in North Carolina, that the proposed wireless support
41 structure and any attached wireless facilities and antennae meet or
42 exceed accepted industry standards for wind loading, base
43 stabilization and other critical engineering characteristics required
44 by this ordinance, the North Carolina Building Code and the
45 accepted industry standards for wind loading, base stabilization and
46 other critical engineering characteristics as defined by American

1 National Standards Institute (ANSI), Telecommunications Industry
2 Association (TIA) and Electronic Industry Alliance (EIA) 222-G or
3 its successors.
4

- 5 (6). Documentation, prepared and sealed by a professional engineer
6 registered in North Carolina, that the proposed wireless support
7 structure and any attached wireless facilities and antennas do not
8 exceed the minimum height necessary to accomplish the purpose for
9 which they are constructed.
10
11 (7). For wireless telecommunications sites only, documentation,
12 prepared and sealed by a professional engineer registered in the
13 state, stating the number of collocations that the proposed wireless
14 support structure is designed to accommodate once constructed.
15
16 (8). Documentation, prepared and sealed by a professional engineer
17 registered in the state, to demonstrate that the wireless support
18 structure has sufficient structural integrity for its intended uses.
19 Documentation shall include a certification that all wireless support
20 structures and attached wireless facilities shall be capable of
21 withstanding sustained winds of at least 135 miles per hour whether
22 or not all of the collocations the structure has been designed to
23 accommodate have been attached to the structure.
24
25 (9). A copy of the lease agreement with the property owner along with
26 copies of any easement agreements necessary for ingress, egress and
27 use of the property.
28
29 (10). Documentation consisting of a certificate of insurance verifying the
30 existence of general liability insurance coverage of at least
31 \$5,000,000.00 at no cost to the town. The certificate shall contain a
32 requirement that the insurance company notify the town 30 days
33 prior to the cancellation, modification, or failure to renew the
34 insurance coverage required.
35
36 (11). For wireless telecommunications sites only, a copy of the approved
37 National Environmental Policy Act of 1969 (NEPA) compliance
38 report for all wireless support structures, antennas, wireless
39 facilities, accessory structures or equipment proposed for the site, if
40 such report is required to be produced pursuant to federal or state
41 law.
42
43 (12). For wireless telecommunications sites only, documentation from the
44 town's police and fire service providers regarding the number and
45 type of emergency communication antennas which are necessary for
46 the wireless telecommunications site to support such

1 communications along with a certification from a professional
2 engineer registered in the state stating that the wireless
3 telecommunications site is designed to support the attachment of the
4 necessary emergency communication antennas.
5

6 (13). For wireless telecommunications sites only, a memorandum of
7 understanding regarding removal of abandoned structures and
8 equipment located at the proposed wireless telecommunication site.
9 Any wireless telecommunications site that is not operated for 180
10 continuous days in a 12-month period shall be considered
11 abandoned. The owner of an abandoned wireless
12 telecommunications site shall be responsible for the removal of all
13 structures and equipment on the site within ninety (90) days of
14 receipt of such notification by the town. Failure to remove
15 abandoned equipment will result in its removal by the town at the
16 owner's expense. In its discretion, the town may condition approval
17 of a permit for building of the proposed wireless support structure
18 on the applicant providing a bond or letter of credit sufficient to
19 allow the town to remove the proposed structure if it is abandoned
20 and not removed within the allowed time period by the applicant.
21

22 (14). Any other documentation necessary to ensure compliance with this
23 section as well as applicable federal and state laws.
24

25 (e) *Review process.* The town will use the following criteria in its review of an
26 application for any wireless telecommunication site, telecommunication tower, wireless
27 facility, antennae or accessory structure other than small wireless facilities.
28

- 29 1. The proposed application meets or exceeds the standards of this
30 section.
31
- 32 2. The use will not materially endanger the public health, safety or
33 welfare if located where proposed and developed according to the
34 plan submitted.
35
- 36 3. The required conditions, specifications, and actions described in this
37 article have been met.
38
- 39 4. The location and character of the facility will be in harmony with
40 the area in which it is to be located.
41

42 (a) *Consultants.* The town may fix and charge an application fee,
43 consulting fee, or other fee associated with the submission, review, processing,
44 and approval of an application to site new wireless support structures or to
45 substantially modify wireless support structures or wireless facilities that is
46 based on the costs of the services provided and does not exceed what is usual
47 and customary for such services. Any charges or fees assessed by the Town on

1 account of an outside consultant shall be fixed in advance and incorporated into
2 a permit or application fee and shall be based on the reasonable costs to be
3 incurred by the town in connection with the regulatory review authorized under
4 this section. The town may incorporate such fees into its generally adopted fee
5 schedule. The town may impose additional reasonable and cost based fees for
6 costs incurred should an applicant amend its application. On request, the
7 amount of the consultant charges incorporated into the permit or application
8 fee shall be separately identified and disclosed to the applicant. The fee
9 imposed by the town for review of the application may not be used for either
10 of the following:

- 11
12 (i) Travel time or expenses, meals, or overnight accommodations incurred
13 in the review of an application by a consultant or other third party.
14
15 (ii) Reimbursements for a consultant or other third party based on a
16 contingent fee basis or a results-based arrangement.
17

18 (b) *Conditions.* The town council may place reasonable conditions on
19 the issuance of a conditional use permit pursuant to this section regarding
20 public safety, land use, or zoning issues, including, but not limited to,
21 aesthetics, landscaping, land-use based location priorities, structural design,
22 setbacks, and fall zones. The town may condition approval of an application
23 for a new wireless support structure on the provision of documentation prior to
24 the issuance of a building permit establishing the existence of one or more
25 parties, including the owner of the wireless support structure, who intend to
26 locate wireless facilities on the wireless support structure. The town shall not
27 deny an initial land-use or zoning permit based on such documentation.
28

29 (c) *Decisions.* The town shall issue a written decision approving or
30 denying an application under this section within a reasonable period of time
31 consistent with the issuance of other land-use permits in the case of other
32 applications, each as measured from the time the application is deemed
33 complete.
34

35 (f) *Annual review.* Any person who holds a zoning or conditional use permit
36 issued pursuant to this section shall annually submit an application for a renewal permit.
37

- 38 (1) *Procedure.* In order for a zoning or conditional use permit to remain valid,
39 a renewal permit must be issued within 365 days of the issuance of the
40 certificate of occupancy related to the initial permit or of the date of the
41 issuance of the previous annual renewal permit. The application for a
42 renewal permit must be received no less than ten days prior to nor more than
43 30 days prior to the date a renewal permit must be issued. Upon review of
44 the application and determination of the applicant's compliance with the
45 annual review requirements of this section the town's code enforcement and
46 inspections department shall issue a renewal permit for an additional 365-
47 day period. A permit holder's renewal application packet must include all
48 of the following:

- a. A renewal application fee in the amount set by the town.
- b. A complete renewal application presented on a form prepared and provided by the town's code enforcement and inspections department.
- c. Documentation consisting of a certificate of insurance verifying the continued existence of general liability insurance coverage meeting or exceeding the requirements of section 36-175(c)(3)j. during the time period that the renewal permit will be valid.
- d. Documentation signed and sealed by a state registered engineer indicating that all structures and equipment have remained in compliance with all local, state, and federal requirements, including but not limited to, the requirements of this ordinance at the time the original permit was issued and any requirements or conditions stated in the original permit.

(2) *Noncompliance.* Upon a permit holder's failure to submit a timely renewal application or the permit holder's failure to otherwise comply with this section the previously issued permit and/or renewal permit shall be suspended upon reaching the date that a renewal permit must be issued. Once suspended, the permit shall remain suspended until the permit holder submits an application and a review of the application by the town's code enforcement and inspections departments determines that the permit holder has complied with the annual review requirements of this section. Upon such a showing, the town shall issue a renewal permit for an additional 365-day period. If a suspension continues for more than 30 days, the permit holder's existing permit and/or renewal permit(s) shall expire.

(g) *Validity of permits.* A conditional use permit or zoning permit issued pursuant to this section shall expire if the improvements permitted are not completely constructed within 24 months of the date of the approval of a building permit.

(h) *Waiver or modification of requirements:* If upon the review of any application submitted pursuant to this section, the town council determines that denial of a permit based on any requirement or requirements of this section as applied to the application before the town council may be contrary to federal or state law, the town council may in its sole discretion vary, modify or disregard any such requirement in a manner which complies with the relevant law. The town council may continue any public hearing on a permit application for a reasonable time to consider such a determination and its actions thereon.

(i) *Small wireless facilities.* The collocation and use of small wireless facilities, including micro wireless facilities, by wireless service providers shall be governed by this

1 section. Small wireless facilities meeting the requirements of this section are a permitted
2 use in all town zoning districts.

3
4 (1) *Applications and Permits.* Applicants must obtain a permit to collocate a
5 small wireless facility.

6
7 a. *Application Requirements:* The application must affirmatively show
8 that the proposed small wireless facilities meet: (i) the town's
9 applicable codes; (ii) town code of ordinance provisions or
10 regulations that concern public safety, objective design standards for
11 decorative utility poles, city utility poles, or reasonable and
12 nondiscriminatory stealth and concealment requirements, including
13 screening or landscaping for ground mounted equipment; (iii) public
14 safety and reasonable spacing requirements concerning the location
15 of ground mounted equipment in a right-of-way; or (iv) the historic
16 preservation requirements in subsection 160A 400.52(i).

17
18 b. *Attestation Requirement:* An application must include an attestation
19 that the small wireless facilities shall be collocated on the utility
20 pole, city utility pole, or wireless support structure and that the small
21 wireless facilities shall be activated for use by a wireless services
22 provider to provide service no later than one year from the permit
23 issuance date, unless the town and the wireless provider agree to
24 extend this period or a delay is caused by a lack of commercial
25 power at the site.

26
27 b. *Completeness of Application:* A permit application shall be deemed
28 complete unless the town provides notice otherwise in writing to the
29 applicant within 30 days of submission or within some other
30 mutually agreed upon time frame. The notice shall identify the
31 deficiencies in the application which, if cured, would make the
32 application complete. The application shall be deemed complete on
33 resubmission if the additional materials cure the deficiencies
34 identified.

35
36 c. *Procedure for Processing:* The permit application shall be processed
37 on a nondiscriminatory basis and shall be deemed approved if the
38 town fails to approve or deny the application within 45 days from
39 the time the application is deemed complete or a mutually agreed
40 upon time frame between the town and the applicant.

41
42 d. *Permit denials and resubmissions:* An application may only be
43 denied for failure to meet the requirements of this section. If an
44 application is denied, the town must (i) document the basis for a
45 denial, including the specific code provisions on which the denial
46 was based and (ii) send the documentation to the applicant on or

1 before the day the town denies an application. The applicant may
2 cure the deficiencies identified by the town and resubmit the
3 application within 30 days of the denial without paying an additional
4 application fee. The town shall approve or deny the revised
5 application within 30 days of the date on which the application was
6 resubmitted. Any subsequent review shall be limited to the
7 deficiencies cited in the prior denial.
8

9 e. Consolidated Applications: An applicant seeking to collocate small
10 wireless facilities at multiple locations within the town shall be
11 allowed at the applicant's discretion to file a consolidated
12 application for no more than 25 separate facilities and receive a
13 permit for the collocation of all the small wireless facilities meeting
14 the requirements of this section. The town may remove small
15 wireless facility collocations from a consolidated application and
16 treat separately small wireless facility collocations (i) for which
17 incomplete information has been provided or (ii) that are denied.
18 The town may issue a separate permit for each collocation that is
19 approved.
20

21 f. Time for commencement and activation of collocation: The permit
22 may specify that collocation of the small wireless facility shall
23 commence within six months of approval and shall be activated for
24 use no later than one year from the permit issuance date, unless the
25 town and the wireless provider agree to extend this period or a delay
26 is caused by a lack of commercial power at the site.
27

28 g. Application fees: The town may charge an application fee that shall
29 not exceed the lesser of (i) the actual, direct, and reasonable costs to
30 process and review applications for collocated small wireless
31 facilities; (ii) the amount charged by the town for permitting of any
32 similar activity; or (iii) one hundred dollars (\$100.00) per facility
33 for the first five small wireless facilities addressed in an application,
34 plus fifty dollars (\$50.00) for each additional small wireless facility
35 addressed in the application. In any dispute concerning the
36 appropriateness of a fee, the town has the burden of proving that the
37 fee meets the requirements of this subsection.
38

39 h. Technical Consulting fees: The town may impose a technical
40 consulting fee for each application, not to exceed five hundred
41 dollars (\$500.00), to offset the cost of reviewing and processing
42 applications required by this section. The fee must be based on the
43 actual, direct, and reasonable administrative costs incurred for the
44 review, processing, and approval of an application. The town may
45 engage an outside consultant for technical consultation and the
46 review of an application. The fee imposed by the town for the review

1 of the application shall not be used for either of the following:

2
3 (1) Travel expenses incurred in the review of a collocation
4 application by an outside consultant or other third party.

5
6 (2) Direct payment or reimbursement for an outside consultant
7 or other third party based on a contingent fee basis or results
8 based arrangement.

9
10 In any dispute concerning the appropriateness of a fee, the town has
11 the burden of proving that the fee meets the requirements of this
12 subsection.

13
14 i. *Removal of abandoned facilities:* A wireless services provider shall
15 remove an abandoned wireless facility within 180 days of
16 abandonment. Should the wireless services provider fail to timely
17 remove the abandoned wireless facility, the town may cause such
18 wireless facility to be removed and may recover the actual cost of
19 such removal, including legal fees, if any, from the wireless services
20 provider. For purposes of this subsection, a wireless facility shall be
21 deemed abandoned at the earlier of the date that the wireless services
22 provider indicates that it is abandoning such facility or the date that
23 is 180 days after the date that such wireless facility ceases to
24 transmit a signal, unless the wireless services provider gives the
25 town reasonable evidence that it is diligently working to place such
26 wireless facility back in service.

27
28 j. *Routine maintenance and replacement:* No application, permit or
29 fees are required for (i) routine maintenance; (ii) the replacement of
30 small wireless facilities with small wireless facilities that are the
31 same size or smaller; or (iii) installation, placement, maintenance,
32 or replacement of micro wireless facilities that are suspended on
33 cables strung between existing utility poles or city utility poles in
34 compliance with applicable codes by or for a communications
35 service provider authorized to occupy the city rights-of-way and
36 who is remitting taxes under G.S. 105 164.4(a)(4c) or G.S. 105
37 164.4(a)(6). The town may require production of sufficient
38 information to make the determination that no application, permit or
39 fees are required under this section.

40
41 k. *Other permits not precluded:* Nothing in this section shall prevent
42 the town from requiring other town permits for work that involves
43 excavation, affects traffic patterns, or obstructs vehicular traffic in
44 the city rights-of-way.

1 (2) Use of town rights-of-way. Wireless providers may use town rights-of-ways
2 in accordance with this section. Wireless providers may use Department of
3 Transportation rights-of-way pursuant to lawful authorization from the Department
4 of Transportation.

5
6 a. Collocation of small wireless facilities: Subject to the requirements
7 of Section 36-175(i)(1), a wireless provider may collocate small
8 wireless facilities along, across, upon, or under any town rights-of-
9 way.

10
11 b. Utilities and poles within rights-of-way: A wireless provider may
12 place, maintain, modify, operate, or replace associated utility poles,
13 city utility poles, conduit, cable, or related appurtenances and
14 facilities along, across, upon, and under any town rights-of-way.
15 The placement, maintenance, modification, operation, or
16 replacement of utility poles and city utility poles associated with the
17 collocation of small wireless facilities, along, across, upon, or under
18 any town rights-of-way shall be subject only to review or approval
19 under Section 36-175(i)(1) if the wireless provider meets all the
20 following requirements:

21
22 (1) Each new utility pole and each modified or replacement
23 utility pole or city utility pole installed in the rights-of-way
24 shall not exceed 50 feet above ground level.

25
26 (2) Each new small wireless facility in the rights-of-way shall
27 not extend more than 10 feet above the utility pole, city
28 utility pole, or wireless support structure on which it is
29 collocated.

30
31 c. Application required to place or modify utility poles in rights-of-
32 way: A wireless provider shall apply to place utility poles in the city
33 rights-of-way, or to replace or modify utility poles or city utility
34 poles in the public rights-of-way, to support the collocation of small
35 wireless facilities. The town shall accept and process the application
36 in accordance with the provisions of Section 36-175(i)(1),
37 applicable codes, and other local codes governing the placement of
38 utility poles or city utility poles in the town rights-of-way, including
39 provisions or regulations that concern public safety, objective
40 design standards for decorative utility poles or city utility poles, or
41 reasonable and nondiscriminatory stealth and concealment
42 requirements, including those relating to screening or landscaping,
43 or public safety and reasonable spacing requirements. The
44 application may be submitted in conjunction with the associated
45 small wireless facility application.
46

1 d. Rights-of-way use to comply with other requirements: Applicants for
2 use of a city rights-of-way shall comply with Chapter 28
3 undergrounding requirements prohibiting the installation of above
4 ground structures in the town's rights-of-way without prior
5 approval. In no instance in an area zoned single family residential
6 where the existing utilities are installed underground may a utility
7 pole, city utility pole, or wireless support structure exceed forty (40)
8 feet above ground level, unless the town grants a waiver or variance
9 approving a taller utility pole, city utility pole, or wireless support
10 structure.

11
12 e. Rights-of-way charges: The town may assess a rights-of-way charge
13 for use or occupation of the rights-of-way by a wireless provider,
14 subject to the restrictions set forth under G.S. 160A-296(a)(6). In
15 addition, charges authorized by this section shall meet all of the
16 following requirements:

17
18 (1) The rights-of-way charge shall not exceed the direct and
19 actual cost of managing the city rights-of-way and shall not
20 be based on the wireless provider's revenue or customer
21 counts.

22
23 (2) The rights-of-way charge shall not exceed that imposed on
24 other users of the rights-of-way, including publicly,
25 cooperatively, or municipally owned utilities.

26
27 (3) The rights-of-way charge shall be reasonable and
28 nondiscriminatory.

29
30 The town may provide free access to town rights-of-way on a
31 nondiscriminatory basis in order to facilitate the public benefits of
32 the deployment of wireless services.

33
34 f. Consent required for use of private property: No person may place,
35 maintain, modify, operate, or replace a privately owned utility pole
36 or wireless support structure or to collocate small wireless facilities
37 on a privately owned utility pole, a privately owned wireless support
38 structure, or other private property without the consent of the
39 property owner.

40
41 g. Damages to rights-of-way: Wireless providers shall repair all
42 damage to a town rights-of-way directly caused by the activities of
43 the wireless provider, while occupying, installing, repairing, or
44 maintaining wireless facilities, wireless support structures, city
45 utility poles, or utility poles and to return the rights-of-way to its
46 functional equivalence before the damage. If the wireless provider

fails to make the repairs required by the town within a reasonable time after written notice, the town may undertake those repairs and charge the applicable party the reasonable and documented cost of the repairs. The town may maintain an action to recover the costs of the repairs.

- h. Approval under section relates only to small wireless facility: The approval of the installation, placement, maintenance, or operation of a small wireless facility does not authorize the provision of any communications services or the installation, placement, maintenance, or operation of any communications facility, including a wireline backhaul facility, other than a small wireless facility, in the rights-of-way.

ARTICLE IV. Statement of Consistency with Comprehensive Plan and Reasonableness.

The Town's adoption of this ordinance amendment is consistent with the Town's adopted comprehensive zoning ordinance, land use plan and any other officially adopted plan that is applicable. For all of the above-stated reasons and any additional reasons supporting the Town's adoption of this ordinance amendment, the Town considers the adoption of this ordinance amendment to be reasonable and in the public interest.

ARTICLE V. Severability.

All Town ordinances or parts of ordinances in conflict with this ordinance amendment are hereby repealed. Should a court of competent jurisdiction declare this ordinance amendment or any part thereof to be invalid, such decision shall not affect the remaining provisions of this ordinance amendment nor the Zoning Ordinance or Town Code of the Town of Southern Shores, North Carolina which shall remain in full force and effect.


ARTICLE VI. Effective Date.

This ordinance amendment shall be in full force and effect from and after the 6th day of March, 2018.




Tom Bennett, Mayor

ATTEST:


Sheila Kane, Town Clerk

APPROVED AS TO FORM:


Town Attorney

Date adopted: 3/6/2018

Motion to adopt by Councilmember: Mayor Tom Bennett

Motion seconded by Councilmember: Councilman Gary McDonald

Vote: 5 AYES 0 NAYS